

LFC Requester:**Marty Daly**

**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment**

Correction **Substitute**

Date 01/19/2016

Bill No: HB 75

Sponsor: Rep. McCamley

Agency Code: 305

Short Cannabis Revenue & Freedom

Person Writing Ari Biernoff

Title: Act

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

HB 148 (Industrial Hemp Research) and SB 3 (Research on Industrial Hemp) overlap to a limited extent with some of the provisions of this bill.

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

This bill would create a comprehensive scheme for the manufacture, distribution, sale, and taxation of marijuana and marijuana products. At least four cabinet agencies would be responsible for administering aspects of this regulatory scheme – the Departments of Agriculture, Health, Regulation & Licensing, and Taxation & Revenue.

This bill introduces new language and also would amend numerous sections of the Controlled Substances Act (Section 30-31-1 et seq.) as well as a variety of other existing laws including Section 24-15-10 (the Ski Safety Act) and Section 29-19-4 (the Concealed Handgun Carry Act).

FISCAL IMPLICATIONS

Beyond the scope of this analysis.

SIGNIFICANT ISSUES

HB 75 would create tension, if not outright conflict, between New Mexico law and federal drug law. The federal government regulates marijuana (and cannabis products) through the Controlled Substances Act, 21 U.S.C. § 811 *et seq.* Under current federal law, cannabis is treated like every other controlled substance, such as cocaine and heroin. The federal government places every controlled substance in a schedule, in principle according to its relative potential for abuse and medicinal value. Under the federal Controlled Substances Act, cannabis is classified as a Schedule I drug, which means that the federal government views cannabis as highly addictive and having no medical value.

“Hemp” is a commonly used term for high-growing industrial varieties of the cannabis plant and its products, which include fiber, oil, and seed. Hemp is refined into products such as hemp seed foods, hemp oil, wax, resin, rope, cloth, pulp, paper, and fuel. It also appears on federal list of controlled substances. Efforts in Congress to remove hemp from regulation have not progressed towards passage.

In addition, federal law criminalizes a number of activities that would be permitted under New

Mexico law pursuant to HB 75. For example, federal law prohibits the distribution, possession with intent to distribute and manufacture of marijuana or its derivatives (21 U.S.C. §§ 841, 960, 962); simple possession of marijuana (21 U.S.C. § 844); and establishing manufacturing operations, i.e. opening, maintaining, financing or making available a place for unlawful manufacture, distribution or use of controlled substances (21 U.S.C. § 856).

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

HB 75 would impose significant additional regulatory responsibilities on the Departments of Regulation & Licensing and Taxation & Revenue (and to a lesser extent the Departments of Agriculture and Health).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 148 (Industrial Hemp Research) and SB 3 (Research on Industrial Hemp) overlap to a limited extent with some of the provisions of this bill.

HB 75 conflicts with federal drug law, enforcement of which is subject to greater or lesser emphasis by the federal administrators then holding office.

TECHNICAL ISSUES

By its terms, HB 75 would not apply to, e.g., production, processing or possession of “homegrown marijuana” or “homemade marijuana products” under certain quantities. (*See* Section 4(B)). The sponsor of the bill may not intend such a result, but it thus appears that the bill would create legal protections under state law for commerce in larger quantities of marijuana/marijuana products but would leave processors/possessors of small amounts of “homegrown marijuana” or “homemade marijuana products” uncovered by state law and thus subject only to provisions of federal law criminalizing such production/possession.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS